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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 513

CORNELIA O'CONNOR GREY, JAMES CHARLES GREY and MICHAEL CARTER GREY, *Petitioners,*

v.

FIRST NATIONAL BANK IN DALLAS in its private capacity and as trustee of the O'Connor and Morgan trusts and the ATTORNEY GENERAL OF TEXAS, *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONERS

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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Subsequent to the filing of petitioners' reply brief herein, this Court on November 18, 1968, decided *Commonwealth Coatings Corp.* v. *Continental Casualty Co.*, No. 14, Oct. T. 1968, 37 LW 4037, which provides additional support for petitioners' contention that the judgment of the Texas state court was void or voidable because of the failure of the attorney who purported to represent both the respondent in its capacity as trustee, and the petitioners as the life beneficiary and remain-

dermen of the trust, to disclose to petitioners that he was so appearing, and to advise them of the inherent conflict of interest that that involved. Pet. 8, 18, 31-33; Pet. Rep. Br. 16-18, 26, fn. 10. In *Commonwealth,* the question was the validity of a unanimous arbitral award by a panel of three arbitrators, where the arbitrator chosen by the arbitrators designated by the parties failed to disclose that in the past he had had business relationship with one of the parties. This Court held that the arbitrator's failure to make such disclosure sufficed in itself to vitiate the award, even though there was no charge of any actual bias or prejudice.

The principle underlying *Commonwealth* is no less applicable here. In the state court action the question was whether the purchase by the respondent of certain assets of a trust of which it was trustee, and the petitioners were the life tenant and remaindermen, should be approved. Clearly, due process requires that in such an action, the beneficiaries of the trust be represented by an attorney wholly independent of the trustee, particularly, where as here, the jurisdiction of the court over the beneficiaries is based solely on the appearance filed in their behalf by the attorney.

The petition should be granted.

Respectfully submitted,

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